IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 311 OF 2004

Mrs. Angelina Fernandes
e Peixoto, major, r/o
H.No.163, Ravora,
Navelim, Salcete, Goa. ... Petitioner

Versus

1. Margao Municipal Council,
through its Chief Officer,
having its office at
Margao, Goa,

2. South Goa Planning and
Development Autority,
through its Member-
Secretary having its
office at Dattaprasad
Bldg., 2nd Floor,
Pajifond, Margao Goa,

3. Comunidade of Margao,
through its Attorney,
having its office at
Margao, Goa,

4. Deputy Collector &
S.D.O., South Goa,
Margao, Goa,

5. Mr. Joao Noronha,

6. Mrs. Amelia Noronha,
both majors, both
r/o H. No.134,
Colmorod, Navelim,
Salcete, Goa,

7. Mrs. Viola Fernandes,
major, wife of Inacio
Fernandes, r/o H.No.
44A, Ratvaddo, Navelim,
Salcete, Goa, and

8. Mr. Savio Coutinho,
major, r/o H.No.61-H,
Ratvaddo, Navelim,
Salcete, Goa. ... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. S. Y. Thaly, advocate for the petitioner.

Mr. S. D. Padiyar, advocate for respondent no.1.

Mr. V. P. Thali, advocate for respondent no.2.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H. D. Naik, Addl. Govt. Advocate for respondent no.4.

Mr. S. S. Kantak, advocate for respondent nos.5, 6 and 7.

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ..

DATE : 14th December, 2004

ORAL ORDER (Per Marlapalle, J.)

Heard Mr. Lotlikar, learned Senior Counsel with Mr. S. Y. Thaly, learned advocate for the petitioner and Mr. S. D. Padiyar, learned advocate for respondent no.1, Mr. V. P. Thali, learned advocate for respondent no.2 and Mr. S. S. Kantak, learned counsel for respondent nos.5 to 7. The learned Additional Government Advocate, Mr. H. D. Naik, appears for respondent no.4.

2. As per the petitioner, agricultural land in survey no.56, sub-division 16, of P.T. Sheet no.301 was held by the late Motu alias Mateus Peixoto and on his demise by his three sons, namely Antonio Peixoto, Sebastiao Peixoto and Joaquim Peixoto, whereas the property bearing Chalta no.55, sub-division 1 of P.T. sheet no.301, was held by Mrs. Augusta Carvalo. The respondent nos.5 and 6 are owners of adjoining plots bearing Chalta nos. 46 of P.T. sheet 306 and Chalta no.45 of P.T. sheet no.306. They had made an application to the Comunidade of Margao, (respondent no.3) on 1st August, 1998 for construction of a road through the

tenanted properties bearing survey nos.55/1 and 56/16 of P.T. sheet 301. The agricultural land held by Motu alias Mateus Peixoto is also owned by the Comunidade. The petitioner is the wife of Sebastiao who is no more and thus she claims her right in the said property alongwith the other two sons of late Motu alias Mateus Peixoto. The grievance raised in this petition is mainly about the construction of the road at the instance of respondent nos.5 and 6 connecting to their properties in Chalta nos.45 and 46.

3. There is no dispute that the property jointly held by the petitioner though an agricultural land is within the municipal limits and is covered underthe municipal development plan. The petitioner alongwith her sisters-in-law (wife of Joaquim had filed Regular Civil Suit No.271 of 1999) and in the same suit a Misc. Civil Application no.654/99 praying for temporary injunction was rejected by the learned Civil Judge, Senior Division at Margao on 12th May, 2000. The subject road from Sub-Division 21 through the property of respondent nos. 5 and 6 is about six metres in width and it passes through the sub-division no.16 held jointly by the petitioner. It came on record before the trial Court that the plaintiff had lost about 180 sq. mts. in the said road and an amount of Rs.15,000/- was already paid by way of compensation by the respondent nos.5 and 6. The trial Court noted that the subject road was being built at the instance of or by the Municipal Council.

4. The Municipal Council has filed affidavit in reply and has stated that the existing pathway was sought to be converted into a road and all the tenants of the comunidade property (agricultural land) had submitted their no objections for construction of a "pucca" road. Such a no objection was also submitted in respect of the agricultural land under Sub-division no.16 jointly held by the petitioner. The suit is still pending and in the meanwhile it appears that the present petitioner alongwith the plaintiff no.2 in Regular Civil Suit had approached the Deputy Collector/Sub-Divisional Officer in case No. LRC No.58/2000 and by Order dated 6th November, 2002 the said case was dismissed. The Order passed by the Deputy Collector is presently under challenge in LRC Appeal filed before the Administrative Tribunal at Panaji. In the Order passed by the Deputy Collector on 6th November, 2002, on perusal of the record it is noted that the Margao Municipal Council vide letter dated 20th September, 1999, had informed one Shri Domingo Barreto that the land surveyed under Chalta no.55 of the Sub-Division 1 and Chalta No.56 of Sub-Division No.16 at Colmorod was taken up for construction of road after taking necessary N.O.Cs. from the owners/tenants. The said Municipal Council had also requested the Comunidade of Margao to issue N.O.C. for construction of the access road to the suit land and such an N.O.C. was issued. It appears that by the time this order was passed, the road was not asphalted, but the challenge raised was that there was violation of the

Land Revenue Code.

5. Mr. Lotlikar, learned Senior Counsel in his exhaustive arguments pressed before us the only issue regarding the bar of Section 2 of the Goa Land Use (Regulation) Act, 1991, which has come into force from 2nd November, 1990. It was contended that as per the said Section, no tenanted land can be or allowed to be used for any purpose other than agriculture and the expression "agriculture" shall have the same meaning assigned to it under the Goa, Daman and Diu Agricultural Tenancy Act, 1964. Admittedly, Section 3 of the said Act states that the provisions therein shall not apply to acquisition of any land vested in the tenant under the Goa, Daman and Diu Agricultural Tenancy Act, 1964, by the State for a public purpose under the provisions of the Land Acquisition Act, 1894. It was contended by Mr. Lotlikar that without obtaining any conversion certificate neither the Municipal Council nor the respondent nos. 5 and 6 could have taken up construction of either the pathway or the "katcha" road or a connecting road and this was done only to help the said private respondents, who are developing their property. He placed reliance on the orders passed by this Court in Writ Petition no.71/2000 and 168/2000.

6. We have gone through the orders passed by this Court in the above two said Writ Petitions on 26th June, 2000

and the connected Miscellaneous Applications disposed on 5th September, 2000. We have noted that all other points, except the one pressed before us are pending for consideration before the Civil Court or the Administrative Tribunal. In Writ Petition No.71/2000 as well as Writ Petition No.168/2000 the issue of construction of a road or pathway was not under consideration and this Court had issued general directions to the State authorities to undertake an inspection of the land used for non-agricultural purposes contrary to the provisions of Section 2 of the Goa Land Use (Regulation) Act, 1991 and had issued further directions to ensure that tenanted agricultural land is not allowed to be used for any purpose other than agriculture. In our considered view, construction of pathway or road does not amount to conversion of land for non-agricultural purposes and, in fact, construction of such a road would facilitate the agricultural operations, if any. We, therefore, do not deem it appropriate to entertain this petition and instead leave the parties to agitate the issues as they are pending before the Civil Court or the Administrative Tribunal which will have to be decided without prejudice to the observations made by us in this Order.

7. The petition is rejected summarily.

N. A. BRITTO, J. B. H. MARLAPALLE, J.